IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAUL J. RUTLEDGE, Plaintiff, v. SUSAN E. BECK, Defendant, BRYAN CHUSHCOFF, Appellant. RYAN THOMAS and JULIE THOMAS, husband and wife, Respondents, v. PAUL J. RUTLEDGE and SUSAN E. BECK, Third Party Defendants.	)	No. 64914-1-I DIVISION ONE UNPUBLISHED FILED: June 1, 2010

Cox, J. — At issue in this appeal of these consolidated cases is whether the trial court improperly vacated two deeds of trust encumbering real property that was the subject of orders of sale without service of process on the holder of those deeds of trust. Also at issue is whether the trial court abused its discretion

in disbursing the proceeds of this court-ordered sale.

We hold that the trial court properly vacated the deeds of trust in this proceeding in rem. Service of process on the holder of the deeds of trust was not required under the circumstances of this case. The holder had constructive notice of the pendency of this action by the recording of the July 2000 lis pendens for this action, which was years before the recording of these deeds of trust. Accordingly, the current holder is bound by all proceedings in this action as if he had been a party at inception. We also hold that the trial court did not abuse its discretion in disbursing the proceeds of the partition sale. We affirm.

Ten years ago, Paul Rutledge commenced this action against Susan Beck to determine their relative interests in the real property they owned in Gig Harbor.[1] Rutledge recorded a lis pendens for this action on July 13, 2000. Rutledge and Beck were then tenants-in-common of the property.

Six years ago, the superior court ordered the parties to list the property for sale before October 2004. Five years ago, Ryan and Julie Thomas entered into a written agreement with Rutledge and Beck to purchase the property.

Three years ago, the Thomases moved to intervene in this action in order to specifically enforce their right to purchase the property. That motion appears to have been based on Beck's steadfast refusal to complete the sale. The court granted the motion, and the Thomases recorded a lis pendens on July 17, 2007.

[1] Rutledge v. Beck, noted at 148 Wn. App. 1031,*1, 2009 WL 249229.

On March 27, 2008, retired Judge Donald Thompson, sitting as a judge pro tempore, held a hearing on Rutledge's motion concerning sale of the property. Judge Thompson entered an Order Compelling Sale, Appointing Attorney and Granting Other Relief. The order directed immediate completion of the sale to the Thomases. It also vacated a deed of trust dated February 3, 2005, that encumbered the real property that the court ordered sold to the Thomases. The order reserved for later hearing the issue of attorney fees. Beck appealed.

Division Two of this court filed its opinion in Beck's appeal on February 3, 2009, in Rutledge v. Beck.[2] The court affirmed the order compelling sale of the property to the Thomases. But the court reversed what it characterized as the trial court's denial of attorney fees to the Thomases. The court remanded for further proceedings.

We note that, although the order then on appeal also vacated the deed of trust dated February 3, 2005, Division Two did not address that portion of the order. Division Two also ordered that if there were further proceedings after remand, the case should be assigned to a visiting judge from another county due to Judge Bryan Chushcoff's involvement in the case.[3]

While the appeal was pending, the trial court held Beck in contempt for failure to comply with its March 27, 2008 Order Compelling Sale, Appointing

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[2] Noted at 148 Wn. App. 1031, 2009 WL 249229.

[3] Id. at *9 n.21.

Attorney and Granting Other Relief for sale of the property to the Thomases. The contempt order also vacated a $80,000 deed of trust dated October 18, 2007 against the property. Judge Chushcoff is now the holder of this 2007 deed of trust as well as the 2005 deed of trust that the court had previously vacated.

The sale of the property to the Thomases finally closed in July 2008. Beck refused to vacate the property at closing.

In September 2008, Judge Thompson granted Judge Chushcoff's motion to intervene in this case. The Order on: (1) Motions to Intervene, etc., entered on September 12, 2008, directed disbursement of the net sale proceeds after satisfaction of a first priority deed of trust by a lender not involved in this litigation. It further directed payment of $80,397.49 to Rutledge. The order also directed that "$10,000 should be retained in [Rutledge's counsel's trust account] to pay any statutory costs and to cover possible rental value of property post-sale to Thomas." The order further directed all other sums in the trust account to be paid to Judge Chushcoff. It appears that amount was $99,401.38.[4] Neither Beck nor Judge Chushcoff has appealed this order. Likewise, the Thomases have never appealed this order.

Judge Bruce Hilyer, a visiting judge to whom this case was assigned in accordance with Division Two's directive, ordered disbursal of the $10,000 in

[4] Clerk's Papers at 18-20 (The exact amount that was paid to Judge Chushcoff is not in the record. Judge Chushcoff maintains in his brief that he received $99,401.38). Brief of Appellant at 16.

retained funds by his order authorizing disbursal of funds held in trust dated June 19, 2009, which was filed with the clerk of the court on July 1, 2009. Of the $10,000, an amount of $9,480 was disbursed to the Thomases in partial satisfaction of an attorney fees award to them against Beck and Rutledge, the sellers of the partitioned property. Presumably, this award was based on a contractual provision for attorney fees in the sale agreement that the sellers breached. The balance of $520 was disbursed to the attorney-in-fact for Beck that the court had to appoint to sign closing papers because Beck refused to do so.

The record before us also shows that Judge Hilyer later entered findings, conclusions, and a judgment exceeding $10,000 in favor of the Thomases against Beck only. That judgment was based on her refusal to vacate the property after closing. The amount of the judgment includes reasonable rental value of the property, cleaning expense, the value of a generator wired into the residence as an auxiliary power source removed prior to Beck's vacation of the property, and attorney fees and costs. None of the proceeds of sale were used to pay this judgment. Presumably, this judgment remains unsatisfied.

Judge Chushcoff appeals.[5]

JURISDICTION

[5] The notice of appeal designates six orders on appeal. The record before us is inadequate to address all of these orders. Accordingly, we address only those orders that are dispositive of all issues raised on appeal.

Judge Chushcoff first argues that the trial court lacked personal jurisdiction over him, the holder of the two deeds of trust that encumbered the real property that was partitioned by sale. He claims this voids the orders vacating the liens of these deeds of trust against that property. Because the partition by sale is a proceeding in rem and the lis pendens that Rutledge recorded against the property in July 2000 binds Judge Chushcoff as if he had been made a party at the inception of this case, we disagree.

A tenant-in-common may impose a lien or other encumbrance upon his or her own undivided interest in real property.[6] However, the separate and distinct title interest which each cotenant holds and which he or she is free to encumber without regard to the other cotenants' interests in the common property is only that cotenant's individual, undivided interest.[7]

The right of a tenant-in-common of real property to a partition is absolute in Washington, and is largely governed by RCW 7.52.010 et seq.[8] "An action for partition is a proceeding *in rem*."[9] In the context of an in rem action, "[c]ourts may have jurisdiction to enter judgment with respect to property or things located

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[6] In re Foreclosure of Liens, 130 Wn.2d 142, 148-49, 922 P.2d 73 (1996) (Clallam County v. Folk).

[7] Id. at 149.

[8] Anderson & Middleton Lumber Co. v. Quinault Indian Nation, 130 Wn.2d 862, 873, 929 P.2d 379 (1996) (citing Hamilton v. Johnson, 137 Wash. 92, 100, 241 P. 672 (1925)).

[9] Id.

within the boundaries of the state, even if personal jurisdiction has not been obtained over the persons affected by the judgment."[10]

RCW 4.28.320, titled "Lis pendens in actions affecting title to real estate," states in relevant part:

> At any time after an action affecting title to real property has been commenced . . . the plaintiff . . . may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. ***From the time of the filing only shall the pendency of the action be constructive notice to a . . . encumbrancer of the property affected thereby, and every person whose . . . encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent . . . encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action***.[11]

Whether a court has jurisdiction is a matter of law that this court reviews de novo.[12]

As Division Two of this court determined in Beck's prior appeal in this case, she and Rutledge, as tenants-in-common, each had the right to partition their property by sale. The court referred to RCW 7.52.010, the partition statute, when it made this determination.

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[10] Petition of Lynnwood to Condemn, 118 Wn. App. 674, 679, 77 P.3d 378 (2003) (City of Lynnwood v. Video Only, Inc.) (citing 14 Karl B. Tegland, Washington Practice Series, Civil Procedure, § 5.1).

[11] (Emphasis added.)

[12] Crosby v. County of Spokane, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

Here, Beck executed and delivered to JB Properties, Inc., Judge Chushcoff's predecessor in interest, two deeds of trust that encumbered her interest in the property that the superior court had previously ordered sold. The February 2005 deed of trust secures a promissory note for $50,000. The October 2007 deed of trust secures an additional promissory note for $80,000. Judge Chushcoff is now the holder of these notes and deeds of trust.

Judge Chushcoff's sole argument on appeal is that neither he nor his predecessor in interest was served with process to effectuate personal jurisdiction over them in this case. He claims lack of personal jurisdiction over them voids the orders vacating the two deeds of trust on the real property that was partitioned by sale. He is mistaken.

RCW 4.28.320 provides that every person whose conveyance or encumbrance is executed or recorded subsequent to the recording of a lis pendens "shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action."

Rutledge recorded a lis pendens against the subject property on July 13, 2000, when he commenced this action. The deeds of trust that Judge Chushcoff now holds are "encumbrances" within the meaning of this statute. The record indicates they were recorded in 2005 and 2007, respectively. Thus, the deeds of trust were "subsequently recorded" years after the recording of the Rutledge lis pendens. Accordingly, Judge Chushcoff is a person whose encumbrances

"shall be deemed subsequent" and he is "bound by all proceedings taken" in this action after the July 13, 2000, recording of Rutledge's lis pendens. This partition by sale is a proceeding binding Judge Chushcoff "to the same extent as if he . . . were a party to the action" at its inception under RCW 4.28.320.

Even if Judge Chushcoff could successfully argue that he is not bound by the July 2000 lis pendens, the Thomases also recorded a separate lis pendens when they intervened in this action in July 2007. Applying the above rationale to the October 2007 deed of trust now held by Judge Chushcoff, he is also bound by all proceedings subsequent to the recording of the July 2000 lis pendens by the Thomases.

In sum, under the circumstances of this case, Judge Chushcoff is bound as if he were a party to the action at inception of this case in July 2000. Personal service of process either on Judge Chushcoff or his predecessor in interest was not required in this in rem proceeding.

Judge Chushcoff's citation to cases discussing constitutional principles of due process and personal jurisdiction do not require a different result. None of the cases that he cites in his briefing diminish the legal effect of a prior recorded lis pendens. The lis pendens recorded in this case in July 2000 gave him constructive notice of the proceedings in this case. Moreover, it bound him to the same extent as if he had been a party to this action before he successfully moved to intervene in September 2008.

Although there is no requirement that Judge Chushcoff show any

prejudice based on the proceedings below, we note he has shown none. Both he and Beck either knew or should have known at the time each deed of trust was recorded that recording those instruments would cloud title to the real property. Both also knew that the court had ordered the property partitioned by sale, and that the Thomases had a contract to purchase the property. Yet neither sought the permission of the court before recording either instrument. It is precisely because the recording of these instruments frustrated the court-ordered sale by clouding title that the court vacated these two instruments against the real property.

Nevertheless, the court vacated these two security instruments only with respect to any interest Beck had in the real property. The court recognized that Judge Chushcoff had an interest in Beck's portion of the sale proceeds.

In vacating the $50,000 deed of trust, the trial court stated:

> The Deed of Trust dated the 3rd day of February, 2005, recorded under auditors fee # 200502031098 be and the same is hereby vacated and set aside and held for naught. ***This Deed of Trust shall not be an impediment to sale and any money due under the Deed of Trust shall not be deemed an encumbrance on the property at the time of sale. Any monies due under the above Deed of Trust shall be payable solely from any monies awarded to Susan Beck in the ultimate distribution of these funds.***[13]

The court further ordered that all proceeds from the sale should be deposited in a trust account pending further court order.[14]

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[13] Clerk's Papers at 2 (emphasis added).

[14] Id.

After discovery of the additional cloud on title due to the $80,000 deed of trust, the court vacated that deed of trust, but noted in its oral ruling that Judge Chushcoff's interest was limited to Beck's interest in the property and that this interest was "protected by the money that is retained in the escrow."[15] This is consistent with the court's earlier treatment of the $50,000 deed of trust.

The court's actions are also consistent with RCW 7.52.030, which states:

> The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. ***When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition is made, is thenceforth a lien only on the share assigned to such party***.[16]

In sum, there was no prejudice to Judge Chushcoff by the vacating of the two deeds of trust with respect to the real property. The court made adequate provisions to recognize his security interests, if any, in Beck's portion of the proceeds of sale.

DISBURSEMENT OF SALE PROCEEDS

Judge Chushcoff next argues that he was entitled to receive the $9,480 that Judge Hilyer ordered disbursed to the Thomases. We disagree.

"Partition" is an equitable action in which the court has great flexibility in fashioning appropriate relief for the parties.[17] A court has broad powers

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[15] Report of Proceedings (June 24, 2008) at 17.

[16] (Emphasis added.)

[17] Friend v. Friend, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998); Cummings v. Anderson, 94 Wn.2d 135, 143, 614 P.2d 1283 (1980).

respecting liens against real property to provide equitable remedies.[18] An equitable remedy is reviewed for an abuse of discretion.[19]

As we previously explained in this opinion, Division Two has already characterized this proceeding as a partition by sale, expressly referring to the provisions of RCW 7.52.010. RCW 7.52.220 provides authority for the distribution of sale proceeds in a partition by sale.

> The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:
>
> (1) ***To pay its just proportion of the general cost of the suit***.
>
> (2) To pay the costs of the reference.
>
> (3) ***To satisfy the several liens in their order of priority***, by payment of the sums due, and to become due, according to the decree.[20]

While these statutory provisions provide guidance to a court in determining how to distribute proceeds of a partition by sale, they do not mark the outer limits of a court's exercise of its equitable powers. The supreme court case of McKnight v. Basilides[21] is instructive.

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[18] McKnight v. Basilides, 19 Wn.2d 391, 408, 143 P.2d 307 (1943) (imposing lien against the proceeds of sale of one cotenant in favor of the other cotenant to provide relief in a partition by sale); MGIC Financial Corp. v. H.A. Briggs Co., 24 Wn. App. 1, 6, 600 P.2d 573 (1979) (discharging lien of a deed of trust against certain real property on equitable grounds).

[19] In re Foreclosure of Liens, 123 Wn.2d 197, 204, 867 P.2d 605 (1994) Sac Downtown Ltd. Partnership v. Kahn.

[20] (Emphasis added.)

[21] 19 Wn.2d 391, 143 P.2d 307 (1943).

There, cotenants of real property commenced an action for partition of real property and for an accounting of the income collected by the cotenant in possession of the property.[22] At the conclusion of trial, the court entered a decree that included a judgment for rents, rental use of the property, and attorney fees in favor of the plaintiffs against the other cotenant.[23] The decree further provided that the judgment was a lien in favor of plaintiffs against the interest of the other cotenant in the proceeds of sale.[24]

On appeal, one of the issues was whether some cotenants were entitled to a lien upon another cotenant's interest in the property for amounts found due after an accounting.[25] The partition statute does not provide for such a lien. Nevertheless, our supreme court stated:

> Finally, it is argued that the court erred in impressing a lien upon the interest which appellant owned in the property. It is true that no lien exists in favor of one cotenant against the share owned by the others. However, the court may, in the exercise of its equitable powers and in order to do full justice to all parties concerned, impose a lien upon the interest in the property owned by the one who has benefited by possession, and may provide for the payment of the judgment from the proceeds of the sale in a partition action.[26]

We read this case to hold that a court, in the exercise of its equitable

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[22] Id. at 392-93.

[23] Id.

[24] Id.

[25] Id. at 393.

[26] Id. at 408.

powers, may fashion remedies to address the particular facts of each case. This is so even though the terms of the partition statute may not strictly provide for such a remedy.

Two orders deal with disbursement of the $10,000 in retained sales proceeds. In his Order Disbursing Funds and Granting Judgment for Attorney Fees & Costs dated June 19, 2009, Judge Hilyer ordered disbursement of the $10,000 that Judge Thompson ordered retained in his Order on Motions, etc. distributing the sale proceeds, dated September 12, 2008. The Order Denying Motion to Disburse Funds by Intervenor Bryan Chushcoff, also dated June 19, 2009, also relates to disbursement of sale proceeds.

The first order directs disbursement of $520 to the "court appointed attorney in fact for Susan Beck." This attorney was appointed to sign closing papers for the sale to the Thomases due to Beck's steadfast refusal to cooperate to facilitate closing of that sale. Judge Chushcoff does not challenge this disbursement. In any event, we conclude that this disbursement falls within the "general cost of suit" category which is entitled to first priority of payment under RCW 7.52.220(1).

We turn next to the focus of Judge Chushcoff's challenge: the disbursement of the remaining funds, totaling $9,480, to the Thomases. We conclude that the trial court did not abuse its discretion in disbursing these funds to them.

The challenge to this disbursement of funds is not supported by an

adequate record on appeal. Specifically, we do not have copies of the briefing and evidence below for or against disbursal of these funds. And there is no report of proceeding to tell us what oral arguments were made below for or against the disbursals the court eventually made.

Nevertheless, we may sustain the trial court on any ground supported by the record that is before us, even if that ground was not considered by the trial court.[27] Accordingly, we examine the limited record that is before us to decide the issue.

As we have explained, partition by sale is an equitable proceeding in which the court has great flexibility in fashioning appropriate remedies for the parties. Our examination of this record and the arguments of the parties leads us to conclude that the equities do not favor either Judge Chushcoff or Beck, his borrower.

Judge Chushcoff loaned funds to Beck so that she could meet supersedeas obligations arising from her prior appeal in this case. Those loans were evidenced by two promissory notes and secured by two deeds of trust on the real property that Beck and Rutledge owned as tenants-in-common. The superior court had previously ordered this property partitioned by sale. So far, there is nothing extraordinary about these events.

There is no dispute that the two deeds of trust were recorded after the

[27] Heath v. Uraga, 106 Wn. App. 506, 515, 24 P.3d 413 (2001) (quoting Nast v. Michels, 107 Wn.2d 300, 308, 730 P.2d 54 (1986)).

court had ordered partition by sale of the real property and without the prior permission of the court. Judge Chushcoff and Beck either knew or should have known that recording of these security instruments would cloud title to the real property and frustrate closing of the sale to the Thomases.

In its Order on Show Cause Re: Contempt/Judgment dated June 24, 2008, Judge Thompson found Beck in contempt for interfering with the court ordered sale to the Thomases. This was based, in part, on the recording of the February 2005 deed of trust and her refusal to arrange to set it aside to permit the sale to proceed. She has not appealed that order.

The unexplained and inexcusable failure of Judge Chushcoff and Beck to obtain permission of the court to record the deeds of trust, together with their apparent failure to advise the court of the recording of these instruments, are remarkable. The record reflects that counsel for Rutledge was required to take emergency measures and seek permission from the court to deal with these clouds on title in order to save the sale to the Thomases. In short, the trial court was entitled to view this conduct by Judge Chushcoff and Beck as inequitable in the context of the court's orders to partition the property

We next consider the role of the Thomases in this partition by sale proceeding. Put succinctly, but for their purchase of the property, there would have been no partition by sale. When they entered into the written agreement for sale with Rutledge and Beck in January 2005, they purchased a lawsuit, not just a home in Gig Harbor. As Division Two stated in its earlier opinion in this

action, there was no dispute that Beck repudiated her agreement to sell the property to the Thomases and failed to abide by the trial court's orders to effectuate partition of the property. Division Two recognized that the written agreement provided a basis for the Thomases to be reimbursed for fees in their action for specific performance. The order disbursing funds to them vindicates that right.

The question is whether those fees were properly paid from the proceeds of sale before payment to Judge Chushcoff of any interest he may have had in the proceeds of sale. We conclude that they were properly disbursed to the Thomases.

As in McKnight, the trial court here was entitled to charge the interest of Beck for fees as part of its broad equitable powers. This is consistent with treating those fees as "the general cost of suit" under the partition statute.

The Thomases intervened in this action to seek specific performance of their contract of sale with Rutledge and Beck.[28] That was an action seeking equitable relief.[29] The contract was entered into pursuant to an order to partition by sale.[30] It is undisputed that Beck repudiated the contract, forcing the litigation that followed.

But for the Thomases' enforcement of their contractual right to purchase

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[28] Rutledge v. Beck, 2009 WL 249229, at *4.

[29] Crafts v. Pitts, 161 Wn.2d 16, 25-26, 162 P.3d 382 (2007).

[30] Rutledge v. Beck, 2009 WL 249229, at *2.

the property, there would have been no partition by sale. It was well within the trial court's equitable powers to view the attorney fees of the Thomases as a "just proportion of the general cost of suit," entitled to first priority. Accordingly, Judge Chushcoff's deeds of trust were subordinate to that cost under RCW 7.52.220.

The same analysis supports the court's separate Order Denying Motion to Disburse Funds by Intervenor Bryan Chushcoff.

There is another reason supporting our conclusion that disbursal of the remaining proceeds of sale to the Thomases was proper. The Order on Motions to Intervene, etc., dated September 12, 2008, provided, among other things, for the distribution of the sale proceeds. The court ordered that "$10,000 [of the sale proceeds] should be retained in [the trust account of Rutledge's counsel] to pay any statutory costs and to cover possible rental value of property post-sale to Thomas." The order also provided for distribution of the remaining funds, apparently in the amount of $99,401.38, to Judge Chushcoff.

In substance, the reservation of $10,000 for the purposes stated in the order was a ruling that Beck had no interest in this portion of the sale proceeds. Accordingly, Judge Chushcoff could not have any further interest in this portion of the sale proceeds since his security interests were confined to the interest of Beck. The limit of her interest, and his, in the sale proceeds was represented by the $99,401.38 payment Judge Chushcoff received by virtue of that order.

Neither Judge Chushcoff nor Beck has appealed that order, which is now

final. Given these events, Judge Chushcoff's claim to this portion of the proceeds of sale distributed to the Thomases is directly at odds with that final order that negates any further claim that either he or Beck might have to this portion of the sale proceeds.

Judge Chushcoff relies on RCW 61.24.080(3) and RCW 60.04.226 to support his argument that his security interests in the proceeds are prior to any interest of the Thomases. The former provision provides for the disposition of proceeds from a trustee's sale following a foreclosure on a deed of trust. This is a partition by sale, not a foreclosure. Thus, that statute is not relevant to this case.

Likewise, the latter provision states the obvious—the priority of security interests in realty is generally established by the date of recording. However, as explained earlier in this opinion, the recording of the lis pendens in July 2000 renders these deeds of trust "subsequent encumbrances" and the scheme of distribution of proceeds of the partition statute controls here.

Because the trial court did not abuse its discretion in awarding the remaining $9,480 to the Thomases, it did not abuse its discretion in denying Judge Chushcoff's motion for reconsideration.

DISGORGEMENT OF FUNDS

Without citation to authority, the Thomases ask that Judge Chushcoff "be required to disgorge and pay to [them] $16,625.11, the amount by which he was prematurely overpaid."[31] We decline to grant this request for affirmative relief.

"A notice of cross-review is essential if the respondent 'seeks affirmative relief as distinguished from the urging of additional grounds for affirmance.'"[32] Moreover, a timely notice of appeal is required to obtain review of a trial court's order if not within the scope of cross-review.

The Thomases request disgorgement of funds the lower court ordered disbursed, a request for affirmative relief. But they did not cross-appeal any of the orders designated in Judge Chushcoff's notice of appeal. Moreover, it appears the object of their request is the trial court's Order on Motions, Etc. of September 12, 2008, which no one has appealed. For these reasons, we do not address further their request for disgorgement of funds.

ATTORNEY FEES

The Thomases seek an award of attorney fees on appeal on the ground that this appeal is frivolous. We deny this request.

"An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal."[33] Applying this standard, Judge Chushcoff's appeal is not frivolous.

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[31] Amended Brief of Respondents Thomas at 17.

[32] Robinson v. Khan, 89 Wn. App. 418, 420, 948 P.2d 1347 (1998) (quoting Phillips Building Co. v. An, 81 Wn. App. 696, 700 n.3, 915 P.2d 1146 (1996)) (citing RAP 2.4(a)).

[33] Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007) (citing Ramirez v. Dimond, 70 Wn. App. 729, 855 P.2d 338 (1993)).

We affirm all orders on appeal.

Cox, J.

WE CONCUR: